POLICIES OF GERMANY, ENGLAND, CANADA AND THE UNITED STATES TOWARDS COMBINATIONS

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According to their laws respecting combination, the four countries which are under consideration at this time may be placed in three classes as follows: (1) complete legality of combinations, as in the case of Germany; (2) invalidity of combinations under the civil law, as instanced by England, and (3) prohibition of combinations under the criminal law, as illustrated by Canada and the United States. As combinations flourish in all of these countries, it is evident that the laws are not the sole determining conditions. Moreover, the general civil and criminal legislation of a given country does not cover all the important legislation on this subject, while the policies of the various governments have important application in other directions than in legislation.

A complete understanding of the policies of the several countries would require a consideration of various economic and political conditions which can only be suggested here. Among these factors may be mentioned the character of the country's industries, the system of railroad ownership or control, the tariff policy, the ownership and control of mineral rights, the extent of government industry, and, besides these and similar conditions, the general social and political conditions of the country. Moreover, a proper appreciation of governmental policy would require information as to the extent and character of the industrial combinations which are found in the country, and particularly as to their power or tendency to destroy their competitors, to exploit labor, or to extort exorbitant prices from the consumer.

Germany

Within the last century Germany changed from a policy of strict regulation of industry to one of extreme liberality. Thus the Prussian laws formerly established a very complete control of the mining industry with the regulation of output and prices, and

this system prevailed down to the middle of the nineteenth century.[1] The German states were then, and still are, conspicuous for the importance of industrial enterprises owned and managed by the government. Nevertheless the doctrine of free industry and individual enterprise obtained a considerable hold in Germany towards the middle of the nineteenth century, and a system of industry was developed which left but little restraint on private business activity and freedom of contract.

In particular the laws prohibiting or restricting industrial combinations disappeared almost entirely from the statute books. The recently enacted civil code of Germany, which was adopted when the extent and significance of the cartel system was well understood, contains no express provision against them.[2] Moreover the courts have interpreted the industrial code, which in its very first section provides that industry shall be free, as not inconsistent with the formation of voluntary industrial combinations.[3] Neither are there any general prohibitions in the criminal code against industrial combinations; the only important exception is found in the law of Alsace-Lorraine, which still retains the French penal code. Articles 419 and 420 of this code prohibit, for example, combinations tending to make prices different from what they would be under free competition. No judicial cases, however, have occurred under this law. Exceptions are also found in the laws prohibiting combinations in bidding on public contracts, etc., namely, in Prussia, Hesse and Alsace-Lorraine. Although these laws are generally regarded as dead letter, they are not wholly without practical application.[4]

The criminal law giving no practical hold against cartels, their opponents have often attacked them under the civil code, and particularly section 138, which declares null and void all jural acts (*e. g.*, agreements) which are repugnant to good morals. The imperial court, however, has never condemned a cartel agreement as

[1] Oldenberg: *Studien über die rheinisch-westfälische Bergarbeiterbewegung. Schmollers Jahrbuch*, Bd. 14 (1890). Hundt: *Geschäftliche Lage des Steinkohlen-Bergbaues*, Achter Allgemeiner Deutscher Bergmannstag, 1901, pp. 173–174.

[2] Menzel: *Die Kartelle und die Rechtsordnung*, 1902, p. 16; Landesberger: *Verhandlungen des Sechsundzwanzigsten Deutschen Juristentages*, 1903, p. 350. For a brief statement of German law and decisions see Walker: *The Law Concerning Monopolistic Combinations in Continental Europe, Political Science Quarterly*, Mar., 1905.

[3] Urt. v. 25 Juni, 1890. Entsch. des R Ger. in Civilsachen, Vol. xxviii, p. 244.

[4] *Denkschrift über das Kartellwesen*, II Teil, Berlin, 1906, pp. 28–30. *Cf. Kartell-Rundschau*, Jan., 1910, p. 30; Feb., 1910, p. 93; Oct., 1908, pp. 858–859.

such, although in some of its judgments it has indicated a theoretical limit to the lawfulness of such agreements, as for example, where the aim was monopoly and extortion.[5] This theoretical limit is evidently of little practical significance in view of the monopolistic power and extortionate price policy of the Coke Syndicate in 1900–1901.[6]

An interesting case occurred recently in one of the lower courts in which a cartel was declared to be invalid. It appears that a brewer's cartel had been formed in a certain locality for the sale of beer, which fixed both the wholesale price and the resale price of the dealer. Dealers who did not conform thereto were not to get any beer, "regardless of old or current agreements." The lower court said that the cartel had practically established a monopoly, and in refusing to supply dealers who did not obey its behests, in order to put them out of business, was coming close to the limit of legality. When, in addition to this, it imposed on its own members the requirement that they should violate their existing agreements, it put itself beyond the pale of the law.[7]

In 1896 a law was enacted forbidding unfair competition, and this was somewhat amplified in 1909. Such laws, which are common to most states of Western Europe, are aimed almost entirely at malicious, fraudulent and dishonest business practices, such as circulating false reports, bribery, lying advertisements, betraying business secrets, etc. An important amendment was made to the law in 1909, particularly in establishing a new first section in the following terms:

Whoever in business affairs adopts methods of competition which are repugnant to good morals may be subject to a claim to desist therefrom and to pay damages.[8]

It does not appear that there have been any important cartel cases under this law. The most conspicuous cases appear to have been in connection with misleading advertisements. Nevertheless this new section may have some significance in the future, especially in view of a tendency at the present time to require a higher code of business morals than has been hitherto prevalent. This law does

[5] Urt. v. 4 Feb., 1897. Entsch. des R Ger. in Civilsachen, Vol. xxxv ii, pp. 136–8.

[6] *Cf.* Walker: *Monopolistic Combinations in the German Coal Industry*, New York, 1904, p. 322.

[7] *Kartell-Rundschau*, Mar., 1911, pp. 206–208.

[8] *Gesetz gegen den unlauteren Wettbewerb*, vom 7, Juni 1909. *Reichsgesetzblatt*, 1909, p. 499.

not prohibit price-cutting or boycotting, both of which are lawful in Germany, provided such acts are committed as a matter of business policy and not from a mere malicious purpose to injure another.[9]

The most remarkable feature of German policy is found in the direct encouragement given to certain cartels. In some instances this involves the participation of the government itself in such combinations, and sometimes even the grant of monopolistic privileges to private interests. The participation of the government in such combinations depends of course on the fact that it is likewise engaged in the industry in question. Illustrations are found chiefly in mining enterprises, as, for example, the old alum syndicate in which Prussia was interested (1836–1844) and the potash syndicate in which several German states have participated, and which recently has taken on a new form.

The imperial law of May 25, 1910, concerning the sale of potash,[10] establishes practically a legal monopoly and a government regulation of prices. This is accomplished especially by provisions of the law which, (1) prohibit the sale of potash, except as prescribed by the law, (2) fix the total quantity which may be sold and the proportions to be sold in domestic and export trade, (3) fix the share in such sales for each producer, including government-owned works, both for domestic and export sales, (4) fix the maximum prices to be charged in the domestic market, and, (5) place a prohibitive tax on all sales in excess of the allotted quotas. The conditions established by this law have facilitated the reorganization of the old potash cartel, which includes most of the private producers as well as several state enterprises. The motives of this law were fiscal, economic and political. Destructive competition between the producers was prevented and better financial results secured to them thereby. The extravagant overproduction in the potash industry was checked. Incidentally may be noted a very peculiar provision in the law tending to prevent a reduction in the wages of labor. The system of regulating production and limiting domestic prices has had the intended effect of making export prices much higher than domestic prices. This is made possible chiefly by the fact that Germany has practically a monopoly in the production of potash. The govern-

[9] *Cf. Kartell-Rundschau*, April, 1908, pp. 255–256; *Frankfurter Zeitung, Abendblatt*, Mar. 20, 1912, p. 4.

[10] *Gesetz über den Absatz von Kalisalzen*, vom 25, Mai 1910. *Reichsgesetzblatt*, 1910, p. 775.

ment was anxious to prevent unduly high domestic prices, because potash is an important agricultural fertilizer, and the policy of the government is especially directed to protect and promote the agricultural interests.

While the potash law is the best known and most pronounced effort of the German government to give monopolistic privileges to industry, it is not the only one. The method of taxation of spirits, established years ago (1887), introduced the principle of allotting quotas of output to the several producers.[11] This law has been revised more than once, but the same principle has been continued. By the present law[12] the excise tax for the quantities allotted amounts to 1.05 marks per liter of alcohol, and for quantities in excess thereof to 1.25 marks per liter. This indirect regulation of production gives a quasi-monopolistic character to the industry, and has facilitated the formation of a cartel among a very large number of agricultural producers of spirits.

Similar tax laws, indirectly limiting the quantity of production and facilitating the formation of cartels, are found with respect to beer and matches. A law respecting the taxation of beer[13] provides for a progressive tax according to quantity of output, and, furthermore, for an increase in the tax rate of from 25 to 50 per cent for new breweries. The law for the taxation of matches[14] has a similar provision, namely, an increase in the tax rate of 20 per cent on matches produced in new factories, or in factories in which there is shown to be an increase in output over the average output of the three preceding years, in respect to such increase. Apparently as a direct consequence of this law regarding the taxation of matches a cartel was formed among the producers embracing 82 per cent of the total output, but it did not last long owing to unfavorable market conditions.[15]

In the last three cases cited the chief purpose of the government, apparently, was fiscal, the regulation of the output being established to enable the producers to obtain increased prices and so to shift

[11] *Kontradiktorische Verhandlungen über Deutsche Kartelle*, (Spiritus) Fünfter Band, Berlin, 1906, p. 59.

[12] *Branntweinsteuergesetz.* Vom 15, Juli 1909. *Reichsgesetzblatt*, 1909, p. 661.

[13] *Gesetz wegen Änderung des Brausteuergesetzes.* Vom 15, Juli 1909. *Reichsgesetzblatt*, 1909, p. 697.

[14] *Gesetz betreffend Änderung im Finanzwesen.* Vom. 15, Juli 1909. *Reichsgesetzblatt*, 1909, p. 757.

[15] *Kartell-Rundschau*, Jan., 1911, p. 12.

the burden of the tax on to the consumer. In the case of the spirits tax law the desire to afford encouragement to the agricultural interests was probably an important motive also.

It is of interest to note that Germany is not the only country which has directly or indirectly endeavored to promote a monopolistic organization of industry. Notable examples are found in the sugar industry in Russia and Austria, in the petroleum industry in Roumania and in the sulphur industry in Italy.[16]

The German government has intervened in various other ways in the management of industrial combinations, in some cases to bring about a settlement of disputes between cartels and their competitors or customers, in other cases to inquire into alleged abuses, and, finally, in certain cases, to counteract by administrative action the injurious effects of certain combinations. Thus in the steel industry the Prussian government has intervened to reconcile the differences of the integrated concerns with the straight rolling mills. The elaborate cartel investigation of the imperial government, initiated in 1902, was partly undertaken with this purpose and partly to obtain more extensive information as to the character of cartels and the necessity of government intervention.[17] Again in 1901 the Prussian government made a special investigation of the coal cartels.[18]

Administrative measures to control the conduct of cartels have not been numerous. It should be noted, however, that the Prussian railway administration has at certain times (1901, 1908) admitted foreign coal at specially low rates (raw materials rate) in order to modify prevailing high prices of the Coal Syndicate.[19] A complementary measure, namely the suspension of the specially low railway rates on coal exports has also been applied (1908).[20] With a similar purpose in view the Imperial naval administration in 1908

[16] For Russia see Rutter: *International Sugar Situation, U. S. Dept. of Agriculture*, 1904. For Austria see Walker: *The Sugar Situation in Austria, Political Science Quarterly*, Dec., 1903. For Roumania and Italy see *Denkschrift über das Kartellwesen*, IV Teil, Berlin, 1908, pp. 142–154.

[17] *Kontradiktorische Verhandlungen über Deutsche Kartelle.* The results of this investigation which covered a number of different industries such as coal, iron and steel, paper, spirits, etc., were published in several volumes.

[18] *Bericht der X. Kommission betreffend die Misstände bei dem Verschleiss der Kohlenproduktion.* Haus der Abgeordneten, 19 Legislaturperiode III Session 1901.

[19] Calwer: *Handel und Wandel*, 1900, pp. 84–85; *Bericht des Rheinisch-Westfälischen Kohlensyndikats*, 1901, p. 9: *Kartell-Rundschau*, Oct., 1908, p. 797.

[20] *Kartell-Rundschau*, Oct., 1908, p. 797; Mar., 1910, p. 172.

asked for bids on coal supplies from British producers, and thereby obtained lower prices from the Coal Syndicate.[21]

A much more significant step was the acquisition of coal fields in the Ruhr district by the Prussian government in 1902, in order to obtain more independence in procuring its own supplies and a greater influence on the market prices. The Prussian government was already a large producer of coal in the Saar district and also in Upper Silesia. In the latter region it fixed prices more or less in harmony with the private producers. In 1904 an attempt was made to extend its holdings in the Ruhr district by the secret purchase of the shares of one of the largest coal companies (Hibernia) in the stock market, but this effort resulted in a complete fiasco.[22]

The Coal Syndicate invited the Prussian government to become a member of the syndicate and offered it a veto on the advance of coal prices, but this was declined.[23] The policy of the Prussian fiscus with respect to coal prices was not usually any more moderate than that of the Coal Syndicate. However, at the end of 1908 it proceeded to lower the price of Saar coal before the Coal Syndicate had made any decrease, and this was regarded as a very significant political act.[24] Although the Prussian government's mining administration in the Ruhr had repeatedly refused to enter the Coal Syndicate, in May, 1911, the Budget Commission recommended that this should be done for the purpose of obtaining a greater influence over coal prices.[25] This recommendation was first put into effect during the present year; the Prussian mining administration is now a member of the Coal Syndicate and sells whatever coal the Prussian or Imperial governments do not require through the regular selling organization of the Syndicate.[26] It retains the right, however, to withdraw from this relationship whenever it deems it for the public interest. This agreement affects only the Westphalian coal mines of the government, but it is provided that, if no similar arrangement is consummated with respect to the government's coal production in the Saar district, then this arrangement will lapse at the end of 1912, otherwise it will be continued till the

[21] *Kartell-Rundschau*, Mar., 1910, p. 172.

[22] *Cf.* Walker: *The Hibernia Fiasco, Quarterly Journal of Economics*, 1905.

[23] *Schriften des Vereins für Socialpolitik*, 116 Bd. Verhandlungen der Generalversammlung in Mannheim, 1905, pp. 282–283.

[24] *Kartell-Rundschau*, Mar., 1910, p. 172.

[25] *Kartell-Rundschau*, May, 1911, p. 355.

[26] *Kartell-Rundschau*, Feb., 1912, p. 130.

end of the present syndicate, which continues till 1915. Some regard this agreement as giving the government a powerful influence over the price policy of the syndicate, while others declare it to be a virtual surrender by the government of its policy of preventing the syndicate's maintaining a monopoly in the coal trade, and point to the fact that the syndicate is aiming at a control of the sale of Saar coal also.[27]

A very important act of economic policy which tends to increase the power of the government over industry, and thus indirectly to place some restraint on the growth of combinations, was the revision of the mining laws in 1907. By this law the almost unlimited right of private persons to take up unoccupied mineral deposits was greatly restricted with the purpose of retaining a part of these natural resources for the direct benefit of the government and the people as a whole. The socialists hailed this as a "triumph of socialistic principles."[28]

In considering Germany's policy towards combinations three general conditions should be noted. First, Germany has a general company law which hinders financial excesses and promotes publicity, although it does not restrict consolidations or holding companies. Second, the railroads are almost exclusively owned and operated by the state or federal governments, which not only prevents the encouragement of monopolies through discriminatory rates, but also gives to the several governments a powerful influence over many branches of industry. Third, the several state governments are producers of various raw materials, including particularly coal, potash and lumber, which gives them an important influence in industry. It must be conceded, however, that this power has generally been utilized for financial profit rather than for the benefit of the consumer.

In fact, the policy of the German government, on the whole, has been rather to stimulate industry than to regulate it. This general protective policy, which is illustrated primarily in high customs taxes, is reflected also in substantial encouragement of cartels. In both of these directions its solicitude has been chiefly for the agricultural interest which is the main support of the existing social and political order. The conservative political parties (Cen-

[27] *Kartell-Rundschau*, Feb., 1912, p. 130.

[28] Hue: *Sozialistische Monatshefte*, Apr., 1907, p. 17.

trum, Conservative, Bund der Landwirte) have often attacked the cartels, particularly those in the industrial branches, and recommended their regulation,[29] although they have eagerly promoted similar organizations intended to benefit agricultural interests. The socialists and the national liberals have pursued a variable policy,[30] although the former have sometimes favored the cartels on the theory that they were simply paving the way for socialism. The government ministers have generally upheld them, and in some cases have been their ardent supporters.[31] This has not prevented them, however, from developing the policy of government ownership. A few years ago a Bavarian minister declared that if conditions did not improve the Bavarian government would not hesitate to buy coal abroad or to build a rail mill.[32] In some branches of industry and trade, particularly in those in which cartels have not been successfully established, there is a good deal of opposition to the cartels,[33] not to speak of a general hostility from a large but more or less nondescript class generally known as the consumers.

Taking the attitude in Germany as a whole, however, there is no doubt that it has been favorable to cartels. The characteristic feature of German policy in a positive sense may be described as a strong tendency towards the extension of government ownership and government enterprise. A striking illustration is found in the present effort of the government to establish a government monopoly in the sale of petroleum,[34] which has been brought about partly by the opposition to the Standard Oil Company's control of the business in that country, and partly by the fact that German capital is largely interested in oil production in Roumania and Galicia, but has not had much success in marketing it in Germany.

England

In England monopolies granted by the crown to private individuals were partly abolished in the reign of James I, and practically all were done away with before the end of the seventeenth century.

[29] *Cf. Kartell-Rundschau*, Jan., 1908, p. 24; Apr., 1908, p. 250; Mar., 1909, p. 220.

[30] *Cf. Kartell-Rundschau*, Oct. 31, 1905, p. 577; Jan., 1908, p. 2; Mar., 1908, p. 175; April, 1908, p. 251.

[31] E. g. Rheinbaben, *Cf. Kartell-Rundschau*, Feb. 28, 1904, p. 286.

[32] *Kartell-Rundschau*, Aug. 25, 1904, p. 619.

[33] *Cf. Kartell-Rundschau*, 1904, Mar. 30, 1904, p. 364; June 30, 1905, p. 339; May, 1907, p. 285; *Iron and Coal Trades Review*, Sept. 22, 1911, p. 431.

[34] *Cf. Oil City Derrick*, Mar. 25, 1912 (letter from Michael Murphy, president of the Pure Oil Co.).

The ancient criminal statutes against monopolistic practices, such as regrating, forestalling and engrossing were repealed by the act of 12 George III cap. 71, and the law of 2 and 3 Edward VI against conspiracies and agreements to fix prices, and the wages and hours of labor was repealed by the act of 5 George IV cap. 95. Under the common law, however, agreements in unreasonable restraint of trade remained unlawful until the law was amended by the act of 7 and 8 Victoria cap. 24. The only relic of these criminal laws, apparently, is the prohibition against attempts to affect prices by spreading false reports or by preventing goods from being brought to market by force or by threats. Practically, however, the only law affecting combinations to-day is the ancient common law respecting agreements in unreasonable restraint of trade, which are null and void.[35]

A striking exposition of English judicial opinion on this subject is the following excerpt from the opinion of Bowen, L. J., of the Court of Appeals, in Mogul Steamship Co. *v.* McGregor Gow & Co. *et al.* (1889):[36]

> If indeed it could be plainly proved that the mere formation of "conferences," "trusts," or "associations" such as these were always necessarily injurious to the public—a view which involves, perhaps, the disputable assumption that, in a country of free trade, and one which is not under the iron régime of statutory monopolies, such confederations can ever be really successful—and if the evil of them were not sufficiently dealt with by the common law rule, which held such agreements to be void as distinct from holding them to be criminal, there might be some reason for thinking that the common law ought to discover within its arsenal of sound common-sense principles some further remedy commensurate with the mischief. Neither of these assumptions is, to my mind, at all evident, nor is it the province of judges to mould and stretch the law of conspiracy in order to keep pace with the calculations of political economy. If peaceable and honest combinations of capital for purposes of trade competition are to be struck at, it must, I think, be by legislation, for I do not see that they are under the ban of the common law.

The policy of the law, therefore, is to encourage competition, but it does not prohibit combination. Furthermore, while agreements in unreasonable restraint of trade are invalid, the English courts give a wide scope to the freedom of contract, and they have never interfered with a consolidation of competing industrial enterprises into a single company, on this ground.

[35] *Cf.* Mogul Steamship Co. *v.* McGregor, Gow & Co. *et al.*, House of Lords, 1892, Appeal Cases, p. 25.

[36] 23 Queen's Bench Division (1889), p. 598.

The chief exception to this general policy in England is found with respect to railroads, a branch of business which scarcely belongs to the present topic of discussion. Nevertheless it may be noted that England recognized at an early date the monopolistic character of this business and legislated accordingly. Railroads were permitted to make agreements with respect to rates, but the rates were required to be reasonable, discriminations between persons were prohibited, and strict governmental supervision was established to insure the enforcement of the law. Recent efforts at extensive railroad amalgamation resulted in the interference of the government to prevent their accomplishment.

So also in respect to certain other public utilities, such as gas and water supply, docks and street railways, the strong monopolistic tendencies of the business were recognized, and private enterprises were placed under public regulation or public enterprises substituted for them. Even more remarkable developments of government intervention have taken place with respect to housing problems, but these municipal questions are hardly within the scope of the present subject, although significant with respect to the principles of government functions.

In the police regulation of the liquor traffic the British government limited the number of licenses for the retail trade to such a degree as to give to such licenses the character of a special privilege of a quasi-monopolistic nature and also considerable commercial value. The trades affected thereby have claimed that these licenses were property rights which could not be justly withdrawn without compensation. In this contention they received the support of the conservative party and a political contest ensued on this question which was one of the causes for the recent constitutional crisis.

In a field of monopoly which relates more directly to industry, namely, patents, the necessity of controlling harmful tendencies has been recognized also, though only at a recent date. By the Patent and Designs (Amendment) Act, 1907, restrictions are placed on the rights of the patentee which render agreements in restraint of trade and agreements contrary to public policy, null and void. Important limitations on patent monopolies are found in other countries, but the English law is of peculiar interest at the present time, and for that reason the following quotation is made from an official statement concerning this law:

The act also for the first time makes unlawful any restrictions or conditions attached to the sale of the patented article or process which are in restraint of trade and contrary to public policy. Previously some of the conditions imposed by patentees had prohibited purchasers, or licensees, from using any other articles of a similar character or making use of the inventions of other patentees, and had bound the purchasers or licensees, for very extended periods, to purchase similar articles for the purposes of their trade from the patentee or his nominees. For the future, conditions such as these will be null and void, and means have been provided whereby existing contracts containing these conditions can be determined by either party on payment of reasonable compensation.[37]

Ordinary industrial combinations are, as already shown, either tolerated, as in the case of pools, or given full legal sanction, as in the case of amalgamations or consolidations of companies. Government intervention in their affairs is practically limited to the requirements of the company law, which, however, goes far to promote publicity and to prevent such financial abuses as fraudulent promoting and stock watering. The holding company is permitted and it is frequently used to consolidate the control of companies.

Apart from the postal and telegraph service and municipal public-service enterprises, the government practically abstains from direct participation in commercial or industrial activities. The most marked departure from this principle, apparently, is found in the agreement of the British government with the Cunard Steamship Company. In consideration for conducting its business according to certain rules and putting certain vessels when needed at the disposition of the Admiralty, the Cunard Company receives a large loan at a low rate of interest, and certain cash subsidies. The British government holds one share of the Cunard Steamship Company's stock. While this is a striking departure from the usual British policy, the motive was a political one.[38]

Although pools and trusts are common in England the government has not made any general public investigation of them. The Board of Trade, of course, is more or less cognizant of their doings. When a pool was organized among certain Scotch steel makers in 1904, the government was asked in Parliament whether it would take any action thereon, to which the reply was made that the situation did not seem to require intervention.[39] In 1908 Sir Gilbert

[37] Board of Trade. Memorandum upon the work of the various departments showing legislation and the developments consequent on the new enactments, 1906–1909. London, 1910.

[38] Macrosty: *The Trust Movement in British Industry*, London, 1907, p. 306.

[39] *Kartell-Rundschau*, Mar. 30, 1904, p. 345.

Parker interpellated the Prime Minister on this subject in the following terms:

I beg to ask the Prime Minister whether he is aware of the existence in Great Britain of trusts, rings, cartels and other combinations having for their object the monopolisation of trades and markets, by regulating the output or by keeping up prices and stifling competition; and, seeing that such combinations are in restraint of trade, and are, therefore, inconsistent with the present free trade policy of the country, whether he will take steps to restrain the increasing monopolistic operations of foreign trusts in the United Kingdom; and whether the Government will grant a Royal Commission or a Select Committee to inquire into the existence of railway conferences, shipping rings, coal rings, industrial combinations of the iron and steel trades, such as the Railmakers Syndicate and other organizations like the Imperial Tobacco Trust, the Meat Trust, and the German Electrical Manufacturers Trust.

To this inquiry the Prime Minister, Mr. Asquith, replied as follows:

I am aware of the existence of trade combinations of the kind referred to in the United Kingdom, and I agree that in some cases the effects of these may be prejudicial to the public interest. But the operations of such trusts are necessarily more circumscribed and less mischievous here than in other countries in which they are fostered by a general customs tariff, and I doubt whether there would at the present time be any advantage in such an inquiry as the hon. member suggests.[40]

Already (Nov. 30, 1906) a Royal Commission had been established to investigate the shipping rings, and this commission made an elaborate report thereon in 1909. These shipping rings which are often international in character, have long controlled the rates of freight and maintained their hold over shippers by a system of rebates to those shippers who patronized them exclusively. The general tenor of the Royal Commission's report was that measures should be taken to promote the settlement of disputes by private conferences, conciliation and arbitration between the steamship lines and the shippers, and that the Board of Trade should lend its aid thereto. No further action by the Board of Trade was recommended, unless national interests were affected, when it might inquire into the matter and report to Parliament. To further these ends the commission recommended, among other things, that the Board of Trade be authorized to obtain confidential information on pertinent matters.[41]

[40] *Parliamentary Debates, House of Commons*, April 29, 1908.

[41] *Report of the Royal Commission on Shipping Rings*, Vol. I, 1909, pp. 87–89.

More recently, 1909, the government made an investigation as to "how far and in what manner the general supply, distribution and price of meat in the United Kingdom are controlled or affected by any combinations of firms or companies."[42] The principal findings of this committee were expressed as follows:

> In conclusion, we are of opinion that the combination which exists to the extent we have described between four of the United States companies engaged in the beef trade in the United Kingdom is not at present sufficiently powerful to be a serious danger to the beef trade as a whole.[43]

While the best known writers on the subject of industrial combinations in England, as for example, Mr. Hirst, Mr. Macrosty and Prof. Levy have described in detail numerous and sometimes highly monopolistic combinations in English industry, they agree with the Prime Minister that England's free trade policy furnishes an important safeguard, although they do not recognize it as a complete one. The low transportation rates in a small island like Great Britain, together with its proximity to other large industrial countries, is another factor to be considered in judging this laissez-faire policy. Both of these factors, however, may be neutralized by international combinations of which the rail syndicate and the shipping rings already mentioned are only two examples of a class that is already numerous.

Canada

In contrast with England, the policy of Canada towards industrial combinations has been distinctly repressive. By a criminal statute enacted in 1889 it is declared an indictable offense for persons to combine to unduly limit the facilities of production, to restrain or injure trade or commerce, to unreasonably enhance prices, or to unduly prevent or lessen competition.[44] The terms of the law are much more elaborate and specific in form, but it is not necessary to quote them verbatim. Section 498 provides expressly that these prohibitions do not apply to combinations of workmen for their reasonable protection as such. In this connection it may be noted that a like exemption has been inferred by the courts with

[42] Board of Trade. *Report of the Departmental Committee Appointed to Inquire into Combinations in the Meat Trade.* London, 1909.

[43] *Ibid.*, p. 15.

[44] *The Criminal Code*, Revised Statutes, 1906, sections 496 to 498, inclusive.

respect to combinations of employers to oppose combinations of workmen.[45]

This law was passed, apparently, as a result of an investigation into combinations in Canada which immediately preceded it, and which revealed the existence of a large number of agreements among dealers intended to restrict competition.[46]

It appears that twelve cases have been tried under this law, including both criminal and civil actions. In seven criminal cases tried conviction was secured in five, while in five civil suits this law was twice successfully pleaded in bar of judgment. In none of these cases did the question o a consolidation of competitors appear. This criminal statute, it should be noted, applies to undue restriction of production, unreasonable enhancement of prices, etc.

Another means of curbing combinations is found in the act to amend the Inland Revenue Act (August 10, 1904). This provides substantially that in the case of licensed trades the Minister of Inland Revenue may revoke a license, (1) where the licensee makes contracts of sale or commission with the condition that competing articles shall not be handled by the vendee or agent, or, (2) where the terms of such contracts are such that the profit of the vendee or agent would be greater, if he did not handle such competing articles. The licensed trades covered by this law are principally manufacturers of malt and spirituous liquors and of tobacco. The act was aimed principally at the American Tobacco Company.

Another law aimed at monopolistic combinations is found in the Patent Act (Revised Statutes, 1906, Chapter 69, Sections 42 and 44), which provides substantially that, if a patentee does not meet the reasonable requirements of the public in regard to the patented article, compulsory licenses may be given for its manufacture. It is understood that no application has yet been made of this provision of the law.

Still another means of bringing an obnoxious combination to terms was found in the Customs Tariff of 1907, which provided substantially that if, as a result of a judgment in a Canadian court, it appeared to the Governor in Council that a combination existed in Canada with respect to the manufacture of an article, and that this combination was facilitated by the existence of a tariff duty,

[45] Lefebvre *v.* Knott, 13 Canadian Criminal Cases, 223 (1907).

[46] *Report of the Select Committee to Investigate Alleged Combinations in Manufactures, Trade and Insurance in Canada*, Ottawa, 1888.

then the Governor in Council might admit such article free of duty or reduce the duty, so as to give the public the benefit of reasonable competition. The only instance of the application of this law seems to have been in February, 1902, when the duties on certain kinds of paper were reduced from 25 per cent to 15 per cent ad valorem. This was the result of a complaint by the Canadian Press Association in May, 1900, against a combination of paper manufacturers. This provision of the customs law was repealed by the Combines Investigation Act, 1910, which substituted, however, an almost indentical rule.

Finally, may be noted a very ingenious law known as the Combines Investigation Act, 1910, which incorporates several elements of the laws already described and adds a novel plan of investigation and publicity. The law defines a "combine" in detail, the broad elements being the existence of agreements for fixing prices, restricting competition, or controlling production, to the detriment of producers or consumers, and is made to include, also, a trust, monopoly or merger.

Briefly stated the system of investigation provided is as follows: If six or more British subjects of full age and residents of Canada believe that a combine exists which has enhanced prices or restricted competition to the detriment of consumers or producers, they may make a written application to a judge for an order directing an investigation, specifying the particulars of the case. Upon such application being made the judge shall give a hearing, and, if the complaint appears to have reasonable foundation, the judge shall order investigation by a board. Such board shall consist of three persons, one of whom shall be appointed on the recommendation of the complainants, the second on the recommendation of the parties complained of, while the third shall be a judge recommended by the first two. This board shall proceed to investigate the complaint with powers to summon witnesses and to require the production of books and papers. The report of the findings of this board, made after diligent investigation, shall be published in *The Canada Gazette*.

As a result of such investigation and report, in addition to the important remedy of publicity thus effected, certain positive measures for correcting abuses may be taken, namely, reduction of customs duties, revocation of patent and criminal prosecution. The

provisions for the reduction of customs duties are substantially the same as those described above in connection with the Customs Tariff, 1907, and need not be repeated here. A patent shall be liable to revocation, if the patentee makes use of his exclusive privilege to unduly limit facilities for producing, manufacturing, transporting or dealing in any article of commerce, or to restrain trade or commerce, etc. If the board reports that a patent has been so used, an action for revocation may be initiated by certain officers in the court having jurisdiction of this subject, and the patent may be revoked by the court, if the evidence requires it. The prohibitions of the criminal code under section 498, already indicated above, are practically reiterated in this act. A person found guilty of offending these prohibitions is declared "liable to a penalty not exceeding one thousand dollars and costs for each day after the expiration of ten days, or such further extension of time as in the opinion of the Board may be necessary, from the date of publication of the report of the board in *The Canada Gazette* during which such person continues to offend."

Mr. R. L. Borden, now prime minister, observed during the debates on this law that it is not quite clear what the exact relations are between this part of this act and the criminal code which it practically re-enacts.[47] It may be noted that the penalties are different, and in this case do not include any penalties of imprisonment, though there is a possibility of much higher fines.

The author of this very interesting measure was Mr. King, at that time Minister of Labour. In submitting it to the Canadian Parliament he insisted on the feature of publicity as being of the first importance, and said further: "In introducing this legislation no attempt is being made to legislate against combines, mergers and trusts as such, the whole intention is to place some restraint on these large aggregations of capital so that the advantages which may come from large combinations of wealth may in some measure be secured to the public who have helped to make possible these large combinations."[48]

The only proceedings had under this act are in the case of Drouin *et al. v.* United Shoe Machinery Co. of Canada, which were begun November 10, 1910. The Shoe Machinery Co. resisted the

[47] Canada. *House of Commons Debates*, Tuesday, April 26, 1910, p. 8173 (unrevised edition).
[48] Canada. *House of Commons Debates*, Tuesday, April 12, 1910, p. 6959 (unrevised edition).

proceedings at every stage, even carrying an unsuccessful appeal in the initial stages of the investigation to the judicial committee of the Privy Council. The report of the Board has not yet been published.

Even this brief survey of Canadian legislation makes it evident that Canada is acting betimes with the firm purpose of restraining combinations from injurious exploitation of the public. In this she is simply repeating what she has done in the management of her railroads, which though of great extent and financial power, are under a comprehensive and efficient system of regulation and administrative control.

United States

The subject of the policy of the United States in regard to combinations is such a large one, and is being discussed so fully on this occasion, that it would be out of place to attempt to consider it here, except by the briefest general reference. So far as the general conditions tending to promote industrial combinations are concerned, it may be said that almost everything, apart from the criminal statutes against them, has tended to promote their development. Even our criminal statutes have had an important influence in determining their character—that is, in promoting the formation of large consolidations as distinguished from temporary combinations among independent concerns. This was particularly the case before it was realized that the law could be applied as effectively to such mergers as to agreements between competing concerns.

The federal and state governments have slowly but finally tightened the bands of the law, and compelled obedience thereto. In the case of railroad corporations public control in general has been more successful, which may be attributed in part to the fact that there were not the same uncertainties as to the meaning of the law, and in part to the establishment of administrative organs of regulation and control. Federal administrative control of industrial combinations has not yet been extended beyond the field of publicity. Certain states have made important progress in the establishment of commissions for regulating public-service corporations, insurance, etc. The United States still lacks a general system of corporation law, while the state corporation laws have been extremely lax and in particular have placed little restraint on the formation of holding companies. In another and very important direction there has

been, however, a great advance in recent years, namely, in formulating and applying policies which shall reserve to the public in a greater degree the control and use of natural resources. Within the present week the President has recommended to Congress that potash and nitrate lands be excluded from the general right of entry.

Conclusion

If a broader survey were made of the policies of various countries towards industrial combinations it would be found, judging simply from their legal status, that Belgium and Italy belong substantially in the same category with Germany, that Austria and Hungary are in the same category with England, and that France, Russia, Australia, New Zealand and Cape Colony are in the same category with Canada and the United States.[49] The legal status of industrial combinations, as already stated, does not, however, fully reveal the policy of a country thereto, and the limits of this paper do not permit a particular discussion of the various other circumstances in respect to such policy.

In conclusion it may be fairly said that, in spite of wide differences in the conditions of the several countries as well as in their laws, there is observable a distinct tendency towards a greater degree of restriction and control of industrial combinations. The means which have been adopted for this purpose vary as widely as the laws themselves. In Germany, for example, the tendency is towards an expansion of state industry and participation by the government in the business and direction of industrial combinations. In Canada, on the other hand, publicity and restrictive legislation are almost wholly relied on. The United States is pursuing practically the same policy as Canada, with possibly greater tendencies towards the public control of natural resources. In England alone has a comparatively laissez-faire policy been adhered to in this respect, although frequent government intervention in labor difficulties makes evident that it is a question of practice rather than of principle.[50]

[49] *Cf.* Walker: *Laws Concerning Monopolistic Combinations in Continental Europe. Political Science Quarterly*, Mar., 1905; *Denkschrift über das Kartellwesen*, IV Teil, Berlin, 1908; *Trusts in Foreign Countries, Laws and References Concerning Industrial Combinations in Australia, Canada, New Zealand and Continental Europe*, Government Printing Office, Washington, 1911.

[50] At the time this paper was read (March 30, 1912) the British government was attempting to bring about the settlement of a great coal strike by fixing minimum wages of miners by Act of Parliament.